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Filing date: **10/04/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92051465
Party	Defendant Edge Games, Inc., and Future Publishing, Ltd.
Correspondence Address	TIM LANGDELL EDGE GAMES INC 530 SOUTH LAKE AVENUE, #171 PASADENA, CA 91101 UNITED STATES uspto@edgegames.com
Submission	Other Motions/Papers
Filer's Name	Tim Langdell
Filer's e-mail	uspto@edgegames.com
Signature	/Tim Langdell/
Date	10/04/2011
Attachments	MotionToReverseDivisionOrBringChildRegIn100411.pdf (5 pages)(168602 bytes)



Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria,
VA 22313-1451

October 4, 2011

Attn: Jennifer Krisp

Re: Cancellation No. 92051465

Dear Ms. Krisp,

Please find attached our Motion to Reverse the Division of Reg. No. 2,219,837 or to Bring Child Reg. No. 3,713,604 into These Proceedings.

While we are mindful that the Board asked that only paper relating to the existing two motions before the Board be filed, we believe this Motion is directly related. Just as Co-Defendant Future should have been brought into these proceedings at their commencement, similarly we believe either the division of 2,219,837 should not have occurred or the resultant Child Reg. No. 3,713,604 should have been brought into these proceedings at the time. For this reason, since this motion goes to the core question of which registrations should be subject of these proceedings, we respectfully submit that not only should this motion be considered at this time but that perhaps it should be given priority of consideration insofar as the ruling on it might then impact one or both of the other pending motions before the Board.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Langdell". The signature is fluid and cursive.

Dr. Tim Langdell, CEO.

Services Copies To Cooley and ReedSmith.

EDGE Games, Inc.,

530 South Lake Avenue, #171, Pasadena, California, 91101

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 3,559,342
For the Trademark THE EDGE
Issued January 13, 2009

In the Matter of Registration No. 3,381,826
For the Trademark GAMER'S EDGE
Issued February 12, 2008

In the Matter of Registration No. 3,105,816
For the Trademark EDGE
Issued June 20, 2006

In the Matter of Registration No. 2,251,584
For the Trademark CUTTING EDGE
Issued June 8, 1999

In the Matter of Registration No. 2,219,837
For the Trademark EDGE
Issued January 26, 1999

**EA DIGITAL ILLUSIONS CE AB, a Swedish
Corporation; ELECTRONIC ARTS INC., a
Delaware corporation,**

Petitioners,

v.

**EDGE GAMES, INC., a California corporation;)
FUTURE PUBLISHING LTD, a UK corporation)**

Co-Defendants.

**MOTION TO REVERSE
DIVISION OF REG. NO.
2,219,837 OR TO BRING
CHILD REG. NO.
3,713,604 INTO THESE
PROCEEDINGS**

Cancellation No. 92051465

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, Virginia 22313-1451

1. In the petition that commenced these proceedings, Petitioners called for the cancellation of five registered trademarks including Reg. No. 2,219,837 for the mark EDGE in class 16. The basis for seeking cancellation of this registration includes allegations of fraud on the USPTO in acquiring the registration and/or renewal of 2,219,837, and allegations of non-use (abandonment) of the registration.

2. At the time of Petitioners commencing the instant proceedings Reg. No. 2,219,837 was undivided. According to the TARR database, on November 3, 2009, appreciably after these proceedings had commenced, the division of the registration was processed and a certificate was issued to Co-Defendant Future Publishing Ltd (“Future”) for a new Child Reg. No. 3,713,604 (see Decl. of Robert N. Phillips attached to docket 47, at ¶11 – although Mr. Phillips states the date as November 7, 2009).

3. It is common practice when a registration is being challenged before the Board through a petition to cancel that there be no post-registration action taken in respect to the registration while the Board proceedings are ongoing. Despite this, Reg. No. 2,219,837 was divided some two months after the instant proceedings had commenced. This was clearly an error and the division should not have been processed until the instant proceedings were concluded and thus the division should be reversed.

4. In the alternate, the instant petition underlying these proceedings alleged fraud and non-use on the entire original undivided Reg. No. 2,219,837 – which fact is clear since the registration was undivided at the time Petitioners filed their petition to cancel. The instant petition alleges that the original undivided registration was fraudulently obtained and/or that it was fraudulently renewed. While Co-Defendant Edge Games strongly denies such allegations, nonetheless the allegations stand against the original undivided registration since it is beyond dispute that the registration was undivided at the time of original acquisition and at the time of renewal. Consequently, were Petitioners to prevail in the allegation of fraud, which Edge Games denies it will, such a decision would call for the cancellation of the original undivided registration. That is, if the Board does not reverse the division, then any ruling on the fraud allegations would impact both the parent registration and the child registration 3,713,604. If Petitioners prevail on the fraud claim then both the parent and the child registrations would be cancelled, not just the parent. Similarly, the petition alleges abandonment of the original undivided registration, to counter which co-defendants must provide evidence of

use of the original undivided registration during the three years prior to filing of the instant proceedings. There can be no dispute that the allegation of abandonment was against the original undivided registration (since it was undivided at the time of commencing these proceedings and certainly undivided during all the previous three years). Consequently even if the registration remains divided then proof of use to overcome allegations of abandonment must be provided both in regard to the parent registration and the child registration, 3,713,604.

5. Consequently, if the Board does not reverse the division of Reg. No. 2,219,837 then clearly the child registration, 3,713,604, needs to be brought into these proceedings and added as a sixth registration that then shares all allegations made by Petitioners against Reg. No. 2,219,837.

Since Reg. No. 2,219,837 was not divided at the commencement of these proceedings, and since no post registration action should have been taken while these proceedings were ongoing, Co-Defendant Edge Games' motion to reverse the division should be granted. In the alternate, if the Board does not reverse the division then since the child registration, 3,713,604, is equally subject to allegations of fraud and abandonment as the parent registration, the Board should grant Edge Games' motion and add the child registration to the instant proceedings and the defendants should be required to answer the allegations of fraud and abandonment in respect to the child registration.

Date: October 4, 2011

Respectfully submitted,

By: 

Dr. Tim Langdell, CEO
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Certificate of Service

In accordance with Rule 2.105(a) of the Trademark Rules of Practice, as amended, it is hereby certified that a true copy of the foregoing Motion to Reverse Division of Reg. No. 2,219,837 or to Bring Child Reg. No. 3,713,604 into These Proceedings was served on the following parties of record, by depositing same in the U.S. Mail, first class postage prepaid, this 4th day of October, 2011:

Robert N. Phillips
Reed Smith LLP
101 Second Street, Suite 1800
San Francisco, CA 94105-3659

Gavin L. Charlston
COOLEY LLP
101 California Street, 5th Floor
San Francisco, CA 94111-5800


Cheri Langdell